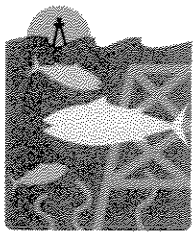

C A R E

*California Artificial Reef Enhancement PROGRAM*

February 28, 2006

Department of the Interior
Minerals Management Service
Attention: Rules Processing Team
381 Elden Street, MS–4024
Herndon, VA 20170-4817

Re: Alternate Energy-Related Uses on the Outer Continental Shelf
RIN 1010—AD30

Dear Sir or Madam:

Thank you for the opportunity to submit these comments on the December 30, 2005 Advance Notice of Proposed Rulemaking for development of a leasing program for alternative uses on the Outer Continental Shelf (OCS) under section 388 of the Energy Policy Act of 2005. Section 388 amended the Outer Continental Shelf Lands Act to authorize the Minerals Management Service (MMS) to issue OCS leases, easements and rights-of-way for activities that, among other things, "use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under this Act. . ."

The California Artificial Reef Enhancement Program (CARE) is a nonprofit organization which, through public education and scientific research, promotes awareness and understanding of the potential value to be derived from artificial reef ecosystems in offshore California, and supports the preservation and enhancement of artificial reefs when recognized as beneficial to the marine environment.

CARE believes that, in developing a leasing program for alternative uses under the Energy Policy Act, MMS has an historic opportunity to work with the National Oceanic and Atmospheric Administration (NOAA) to jointly develop and implement a California Rigs to Reefs Program. A growing body of research, as documented in a Final Environmental Impact Statement prepared by NOAA for the Pacific Groundfish Fishery Management Plan (FMP), demonstrates that oil and gas platforms off California serve a unique and crucial ecological role for commercially important groundfish species, whose populations NOAA is working to build following decades of over-exploitation. Numerous scientific studies, primarily by investigators at the University of California-Santa Barbara (including research published by MMS) have reported that: (i) 38 species of fish managed under the FMP have been observed around oil and gas

platforms off California, many in larger numbers than occur at natural reefs; (ii) oil and gas platforms frequently harbor higher densities of adult and young-of-the-year fish than natural reefs; (iii) platforms are important groundfish nurseries (including evidence that 20% of juvenile bocaccio that survive in a year for the species' entire range are found around just six platforms in the Santa Barbara Channel); and (iv) growth rates for certain species at platforms exceeded growth rates at natural reefs. CARE's prior comments on the FMP and EIS, a compilation of current research and excerpts from the Final EIS are attached to these comments for your convenience.

CARE believes that the use of these structures as artificial reefs is a critical step to promote the recovery of Pacific groundfish populations. In fact, all of the platforms off California are already classed within Essential Fish Habitat for groundfish, which includes both natural and artificial substrates. Actions causing potential adverse effects to this habitat are subject to NOAA evaluation and consultation under the Magnuson-Stevens Fishery Conservation and Management Act. In addition, the Pacific Fisheries Management Council has recommended that the 13 best-studied platforms be specifically designated as Habitat Areas of Particular Concern, a higher category of protection within EFH. NOAA is currently considering the Council's recommendation and a final decision is expected imminently; see 70 Fed. Reg. 72777 (Dec. 7, 2005).

Under MMS's existing regulations, a decommissioned platform must be entirely removed within one year of termination of its OCS production lease, unless it is enrolled in a state artificial reef program. 30 CFR § 250.1730(a). However, no such program exists for platforms located in OCS waters off the State of California. To this end, CARE, NOAA staff and California regulators and others (including representatives of recreational fishing and aquaculture interests) have been discussing the concept of a federal program that would apply to those platforms, referred to in these comments as the California Rigs to Reefs (CalRTR) proposal. Key elements of the CalRTR proposal include NOAA's case-by-case evaluation of environmental and socioeconomic benefits of reefing a particular platform; retention of liability by the former oil and gas production platform owner/operator; and donation of 50% of the savings from reefing rather than removing the platform—an estimated total of $500 milion if all 23 platforms off California are ultimately accepted into the program—to an endowment controlled by NOAA to fund marine research.

CARE requests that MMS take the opportunity presented by Energy Policy Act section 388 to work together with NOAA to coordinate implementation of a CalRTR program. We envision a joint program in which NOAA would conduct the evaluation and collaborate on a joint determination whether to enroll a facility, and MMS would waive the removal requirement and issue a long-term lease for its use as an artificial reef. This joint program would ensure that important fisheries habitat associated with oil and gas platforms will be preserved during and after decommissioning.

The CalRTR concept would complement other alternative uses of OCS facilities proposed for consideration in the ANPR. In addition, the CalRTR proposal is structured so that NOAA and the U.S. Army Corps of Engineers (as permitting authority for artificial reefs under the National Fishing Enhancement Act) would approve the

underlying activity, with MMS addressing the decomissioning and leasing requirements to enable the structures to serve this purpose. As such, the CalRTR proposal is consistent with the ANPR statement that "MMS is not seeking the authority over [alternative uses of OCS facilities], but only the decision to allow platforms to be converted to such uses, if the appropriate agency approves the underlying activity." 70 Fed. Reg. 77346.

We hope that you will give our comments serious consideration. If I can provide additional information, please do not hesitate to contact me.

Sincerely,

George Steinbach
Executive Director

**February 28, 2006**

**Comments of CARE on the MMS's Opportunity to Support the Federal Rigs to Reefs Program in California**

Comment 1

CARE believes that MMS has an historic opportunity to work with NOAA to jointly develop and implement a federal California Rigs to Reefs Program (CalRTR). The CalRTR concept would authorize the conversion of retired oil and gas platforms in the OCS off California into artificial reefs. Only platforms that are important marine habitat, as demonstrated by strong scientific evidence, would be eligible for this program. In addition, the CalRTR proposal would devote 50% of the cost saved by converting the platform to an artificial reef, rather than completely removing the platform, to an endowment that would fund research on the marine environment.

Elements of the CalRTR proposal include:

- Applicable to oil and gas platforms in the OCS off California, which does not have a state artificial reef program.
- NOAA reviews the application to enroll a facility in the program, to determine if net environmental and socioeconomic benefits of converting facility to an artificial reef outweigh net benefits of removal.
- MMS waives the requirement to remove a platform within one year of OCS lease termination and provides a long-term lease for the artificial reef.
- Artificial reef may be owned and managed by a private entity, the State of California, or a federal agency.
- Owner/manager of artificial reef is responsible for obtaining an artificial reef permit from the U.S. Army Corps of Engineers (USACE) under the National Fishing Enhancement Act (33 U.S.C. § 2101 *et seq.*).
- Former owner/operator of oil and gas platform retains liability for contamination and other potential hazards caused by artificial reef, and fully indemnifies the federal government and California against such hazards.
- 50% of the cost savings would be deposited into NOAA-controlled endowment funding ocean-related scientific research.

Comment 2

The CalRTR concept originates in the growing body of evidence that the OCS oil and gas platforms off of the California coast serve a unique and crucial ecological role for

commercially important fish species, whose populations NOAA is working to build following decades of over-exploitation. As the most recent example, on November 23, 2005, the Pacific Fishery Management Council (PFMC) designated 13 oil and gas platforms off of the California coast as Habitat Areas of Particular Concern (HAPC) in Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan (FMP). HAPC is a subset of essential fish habitat (EFH). The identification and protection of EFH is a central tenet of the Magnuson-Stevens Fisheries Conservation Management Act. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." 50 CFR § 600.10. Such "substrate" includes artificial structures underlying the water such as oil and gas platforms. FMPs must demonstrate that "the best scientific information available was used in the description and identification of EFH." 50 CFR § 600.815(a)(1)(ii). The PFMC determined that 13 oil and gas platforms should be designated as HAPC because they serve important ecological functions for groundfish.

As discussed in sections 3.2.2.2.4 and 4.3.3 of the Final Environmental Impact Statement (FEIS) prepared by NOAA for Amendment 19,[1] the PFMC's designation of the 13 oil and gas platforms as HAPC is based on the latest research. By surveying species diversity and demographic features at various depths, comparing rockfish communities at platforms to natural reefs and modeling larvae production, scientists have presented substantial and undisputed evidence that the platforms are highly valuable groundfish habitat. Examples from the evidence include: (i) 38 species of fish managed under the Groundfish FMP have been observed around oil and gas platforms, many in larger numbers than occur at natural reefs; (ii) oil and gas platforms frequently harbor higher densities of adult and young-of-the-year rockfish than natural reefs; (iii) platforms are important rockfish nurseries (including evidence that 20% of juvenile bocaccio that survive in a year for the species' entire range are found around just six platforms in the Santa Barbara Channel); and (iv) growth rates for certain rockfish at platforms exceeded growth rates at natural reefs.[2]

Sections 3.2.2.2.4 and 4.3.3 of the FEIS are attached as Exhibit A. CARE's comments to NOAA on October 5, 2004, May 11, 2005, October 25, 2005, January 9, 2006 and

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[1] National Marine Fisheries Service, National Oceanic and Atmospheric Administration (2005) *Pacific Coast Groundfish Fishery Management Plan, Essential Fish Habitat Designation and Minimization of Adverse Impacts, Final Environmental Impact Statement.*

[2] See, for example, Love et al. (in press) *Potential Utility of Offshore Marine Structures in Rebuilding an Overfished Rockfish Species*, Fishery Bulletin; Emery et al. (in press) *Do Oil and Gas Platforms off California Affect the Fate of Recruiting Bocaccio (Sebastes paucispinis)? An Analysis Based on Trajectories Derived from High Frequency Radar*, Fishery Bulletin; Love et al. (2005) *Distribution of Bocaccio (Sebastes paucispinis) and Cowcod (Sebastes levis) Around Oil Platforms and Natural Outcrops Off California with Implications for Larval Production*, Bulletin of Marine Science (77): 397-408; Love et al. (2003) *The ecological role of oil and gas platforms and natural outcrops on fishes in southern and central California: a synthesis of information*, U. S. Department of the Interior, OCS Study MMS 2003-032; Love et al. (2001) *The ecological role of natural reefs and oil and gas production platforms on rocky reef fishes in southern California: 1998-1999 Survey Report*, U. S. Department of the Interior, OCS Study MMS 2001-028; Love et al. (2000) *Fish assemblages around seven oil platforms in the Santa Barbara Channel area*, Fishery Bulletin (98): 96-117.

February 6, 2006, and to the PFMC on August 23, 2004 and May 25, 2005 regarding the FEIS and FMP Amendment 19 are attached as Exhibit B. We have also attached several scientific publications discussing the ecological importance of the OCS oil and gas platforms off of California, and a summary thereof, as Exhibit C.

Comment 3

The enactment of the Energy Policy Act of 2005 provides MMS with clear authority to jointly implement the CalRTR proposal. MMS's existing regulations at 30 CFR Part 256 implement section 1337(b) of the Outer Continental Shelf Lands Act (OCSLA), which require termination of oil and gas leases that have ceased production. In addition, existing MMS decommissioning regulations generally require full removal of oil and gas within one year after the lease expires (30 CFR § 250.1725), but allow partial removal or toppling in place if "the structure becomes part of a State artificial reef program, and the responsible State agency acquires a permit from [USACE] and accepts title and responsibility for the structure." 30 CFR § 250.1730(a). However, Energy Policy Act Section 388 (codified as subsection 1337(p) of the OCSLA), directs MMS to promulgate regulations for issuing leases, easements and rights-of-way for "other authorized marine related purposes." Section 388 leaves MMS to determine what "other authorized marine-related purposes" to be covered by the regulations. For the reason discussed in Comment 2 above, CARE believes that use as artificial reefs, for the benefit of overexploited fish populations, is an appropriate "marine-related purpose" as authorized by a USACE permit and NOAA approval for enrollment in the CalRTR program.

In sum, CARE believes that Section 388 presents MMS with the opportunity to propose regulations jointly with NOAA for a rigs-to-reefs program, in which MMS would be responsible for the issuance of leases and NOAA would be responsible for evaluating and approving proposed reefing projects and funding marine-related research from the endowment established under the program. Consistent with that approach, MMS's decommissioning regulations would be amended to allow oil and gas platforms to serve as artificial reefs if approved by NOAA and permitted by USACE.

Comment 4

The ANPRM requests information on how MMS can best ensure fair competition in its alternative uses leasing program, allow concurrent developments and minimize multi-use conflicts, and decide among competing projects.

CARE believes that MMS should evaluate proposals on the basis of how each serves existing public needs. As discussed in Comment 2, oil and gas platforms that perform important ecological functions—such as providing habitat for depleted, commercially important species such as cowcod and bocaccio—serve existing public needs that should be protected. However, CARE does not view converting an oil and gas platform to an artificial reef under the CalRTR proposal as competing or conflicting with other alternative uses. The structures function as valuable fish habitat during oil and gas production, and would continue to serve this function concurrent with other alternative uses, such as wind power or aquaculture. It is only at the end of platform use, whether

for oil and gas production or alternative post-production uses, that the question of conversion to an artificial reef arises. Enrollment in the CalRTR program at that point would be necessary to enable the platform to continue to function as fish habitat, just as it did during prior uses, rather than being removed.

Comment 5

The ANPRM requests suggestions as to the environmental information MMS should require for an alternative use project, the types of impacts that could be of concern, and appropriate mitigation.

Under the CalRTR concept, NOAA would have the primary role in evaluating the benefits of converting the structure to an artificial reef, including studies of the marine organisms and communities that are found on and near the platform, evaluation of the platform's ecological function and importance, and consideration of adverse impacts of removing the platform as compared to any impacts from its continued presence. This information contributes to the determination whether the benefits of converting a platform to an artificial reef outweigh the benefits of removing the structure. Most probably, the collection and evaluation of such information should be coordinated with the environmental review process under the National Environmental Policy Act (NEPA). In CARE's view, it would be most appropriate for NOAA to act as NEPA lead agency with MMS as a cooperating agency.

The types of impacts that could be of concern for a reefing project include potential harm to organisms and habitat on and around platform from partial removal of the structure for conversion to an artificial reef, impacts associated with any instability of the structure, and residual risks of contamination. These issues would be evaluated through the NEPA process. Monitoring and mitigation would also be most appropriately determined through the NEPA process. In addition, USACE artificial reef permits must conform to requirements of the National Fishing Enhancement Act, including the requirement to "minimize environmental risks and risks to personal health and property" (33 U.S.C. § 2102(4)), and must be consistent with NOAA's National Artificial Reef Plan (*id.* at § 2103).

Comment 6

The ANPRM solicits information on approaches to ensuring human health and safety on and adjacent to the project site. Platforms in use as artificial reefs must continue to comply with U.S. Coast Guard requirements to prevent hazards to navigation. However, this does not appear to be a major a concern. As far as CARE is aware, no vessel collision or other human safety incident has ever occurred at any of the approximately 200 platforms in the Gulf of Mexico converted to artificial reefs under state programs.

Comment 7

The Energy Policy Act requires a fair return through rental payments for alternative use leases in the OCS. The ANPRM solicits comment on possible payment structures.

However, since an artificial reef itself generates no revenue for the owner or operator, a payment structure based on expected revenue streams is not applicable to this alternative use. Artificial reefs have the potential to generate substantial socioeconomic benefits to commercially important fisheries. Moreover, as described above, the CalRTR concept incorporates a donation of 50% of the savings from foregoing removal to fund marine research. This donation represents potentially enormous sums to be paid into a NOAA-controlled endowment by the former platform owner/operators who benefit from the waiver of removal requirements. If all 23 platforms off California are ultimately accepted into the program, the program would yield an estimated $500 million. The creation of this fund to support for research for the public benefit, at NOAA's direction, represents a very substantial return. CARE believes that MMS should recognize that the public benefits generated by such alternative use as a de facto payment in lieu of rental.[3]

Comment 8

The OCSLA, as amended by the Energy Policy Act, requires leaseholders to furnish a surety bond or other form of security. The ANPRM solicits comments on options MMS should consider to comply with this requirement. As discussed above, the CalRTR concept would require the former platform owner or operator to retain liability for contamination and other potential hazards caused by the artificial reef and to fully indemnify the federal government and California against such hazards. CARE has had preliminary discussions with marine insurers and determined that insurance against such liability should be available at reasonable cost.

[3] To the extent that MMS may consider that it is obligated to collect rental payments for alternative use OCS leases, we recommend that MMS and NOAA coordinate to arrange for such payments from the endowment.